Office-Supreme Court, U.S.
FILED
FEB 29 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963.

No. 876.

EDNA VAN DER SCHELLING,
Petitioner,

v.

U. S. NEWS & WORLD REPORT, INC.,
Respondent.

PETITION OF EDNA VAN DER SCHELLING FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

HARRY LORE,
Suite 400, The Wellington,
19th & Walnut Streets,
Philadelphia, Pa.,
Counsel for Petitioner.

PHILIP DORFMAN,
DORFMAN, PECHNER, SACKS & DORFMAN,
Of Counsel.

International, 711 So. 50th St., Phila., Pa. 19143

TABLE OF CONTENTS.

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement of the Case	3
Reasons for Granting the Writ	6
Conclusion	8
Appendix "A":	
Opinion of the U. S. Court of Appeals	9
Judgment	10

TABLE OF CITATIONS.

Cases.

	Page
Carlisle v. United States, 16 Wall. 147, 83 U. S. 147 (1872)	7
Kennedy v. Mendoza-Martinez, 372 U. S. 144 (1963)	8
Murray v. Schooner "Charming Betsy", 2 Cranch. 64	7
Pemberton v. Colona, 290 F. 2d 220 (3rd Cir., 1961)	6
The Pizzaro, 2 Wheat (U. S.) 227	7
The Venus, 8 Cranch. (12 U. S.) 253 (1814)	7
United States ex rel. D'Esquiva v. Uhl, 137 F. 2d 903, 905 (2d Cir., 1943)	7
Wildes v. Parker, Fed. Cas. No. 17,652 (D. Mass., 1839)	7

Statutes.

	Page
Act of June 25, 1948, c. 646(1), 62 Stat. 928(1), 28 U. S. C. § 1254(1)	2
28 U. S. C. § 1332(a)(2)	2, 7

Miscellaneous.

	Page
Note, 19 Wash. & Lee, L. R. 78, 79, Spring 1962	6

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1963.

No.

EDNA VAN DER SCHELLING,

Petitioner,

v.

U. S. NEWS & WORLD REPORT, INC.,

Respondent.

PETITION OF EDNA VAN DER SCHELLING FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Edna Van Der Schelling, petitioner, prays that a writ of certiorari, issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on December 5, 1963.

OPINIONS BELOW.

The opinion of the District Court is reported in 213 F. Supp. 756. It is also printed in the "Joint Appendix"[1] at pages 31a-44a.

The opinion of the Court of Appeals has not yet been reported. A copy is appended to this petition, as Appendix A (*infra*, p. 9).

---

1. A Joint Appendix was filed in the court below. A certified copy of this appendix and 9 additional copies thereof, have been filed with this petition in accordance with Rule 21 of this Court. All references to the Joint Appendix are designated "JA".

JURISDICTION.

The judgment of the Court of Appeals was entered on December 5, 1963. The jurisdiction of this Court is invoked under the Act of June 25, 1948, c. 646(1), 62 Stat. 928(1), 28 U. S. C. § 1254(1).

QUESTION PRESENTED.

Does the establishment of a domicile in the Republic of Mexico, prior to the institution of suit, by the petitioner, who is an American citizen, constitute the petitioner a "subject" of Mexico so that the requisite diversity of citizenship may exist for the maintenance of a Civil Action for defamation in the Federal Court?

STATUTE INVOLVED.

The statute involved is 28 U. S. C. § 1332(a)(2), which provides:

> "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000 exclusive of interest and costs, and is between:
>
> (2) Citizens of a State, and foreign states or citizens or subjects thereof;"

STATEMENT OF THE CASE.

This is a diversity suit brought to recover damages for a libel.

The petitioner in this case is a citizen of the United States, and for the eleven years preceding the institution of her action was a resident of the Republic of Mexico. She is presently residing in Mexico. The respondent is a corporation organized under the laws of the State of Delaware, with its principal place of business in the District of Columbia (JA 5a).

In the September 19, 1960, issue of respondent's weekly magazine, "U. S. News & World Report", an article appeared entitled "The Underground Railroad to Russia". In that article the petitioner was named as a member of a so-called "American Communist Colony in Mexico" (JA 5a) and was accused of participating in conspiratorial activities designed to aid certain "defectors" from the United States "escape" to the Soviet Union and Cuba.

Petitioner's suit was brought seeking compensatory and punitive damages for this libel on her by the respondent. In her Complaint, the petitioner averred that she is a citizen of the United States and a resident of the Republic of Mexico (JA 4a).

The respondent originally filed a motion for summary judgment averring that, because petitioner, a native born citizen of the United States, has been continuously residing in Mexico since 1950, she is not a citizen of any state within the Federal Union and therefore cannot maintain her action because no diversity of citizenship exists between the parties (JA 12a). The respondent subsequently changed its Motion for Summary Judgment to a Motion to Dismiss for lack of diversity of citizenship. The grounds, however, remained unchanged.

The facts, as testified to by the petitioner on her deposition, establish that the petitioner went to Mexico in 1950

from Los Angeles, California, where she married. In 1951, she commenced employment as a music teacher in an American school in Mexico, which employment lasted until 1960, when she was discharged by the school authorities because of the article on which this suit is based. Real property which the petitioner owned in California was sold in 1964, after the commencement of her action. Petitioner has a United States Passport (JA 24a).

In order to defeat the jurisdiction of the District Court, the respondent filed an affidavit by Edward Hidalgo, an attorney at law practicing in Mexico City (JA 16a). Taking the petitioner's deposition testimony as the factual basis for his opinion on the Mexican law, Senor Hidalgo gave his opinion on petitioner's present status under the law of Mexico. In his opinion, petitioner presently occupies, what is described as an "inmigrada" status in Mexico. Her earlier status was that of "inmigrante" which he defines as ". . . a foreigner who enters the country legally . . . for the purpose of residing therein until he acquires the status of 'inmigrado'" (JA 18a).

The petitioner became an "inmigrado" after continuous residence in Mexico for a five-year period preceding the filing of her application for the status of "inmigrado".

An "inmigrado" is defined under Mexican law as ". . . a foreigner who acquires the right of definitive residence in the country." Such a person has "the permanent right to live in Mexico" and ". . . without authorization of the Ministry of Government, to change from one employer to another, from one activity to another . . . , or to be idle . . ." According to Senor Hidalgo, respondent's expert on Mexican law:

> "The basic concept under Mexican law of both the inmigrante status and the inmigrado status is that the foreigner who obtains such status intends to reside permanently in Mexico. The grant of inmigrante status on an annually renewable basis for an initial

"five-year period gives permission to work for a specific employer, as authorized by the Ministry of Government, and hence is a status conditioned upon the continuation (as annually established) of such employment. After his five year period the permanence of the foreigner's residence in Mexico is considered sufficiently established to warrant official governmental recognition of it by an award of the definitive and unconditional inmigrado status and the substantial rights of permanent residence and virtual freedom of activity or inactivity accorded to a foreigner who possesses such status."

Based on this affidavit of Senor Hidalgo (JA 16a-19a) and the law of the United States, the petitioner resisted the Motion to Dismiss her action on the ground that the description of her status given in that affidavit established a dual status—a citizen of the United States and a "subject" of Mexico, and that in the latter capacity she is entitled to maintain her action. Leave was asked by the petitioner to amend her Complaint to set forth this status, but this was denied by the District Court, and the action dismissed on the ground that there was a failure of diversity between the parties, and, thus no jurisdiction in the Court to hear the cause.

The Court of Appeals (Judges Kalodner, Hastie and Ganey) heard argument on November 18, 1963. On December 5, 1963, the Court of Appeals, in a per curiam opinion, affirmed the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

1. By its decision the Court below has foreclosed an American citizen, domiciled abroad, from instituting suit in a Federal Court on a transitory cause of action for a published libel, on the ground that foreign domicile negates state citizenship, which is predicated on residence, and therefore, vitiates the requisite diversity of citizenship necessary for federal jurisdiction.

In *Pemberton v. Colonia*, 290 F. 2d 220 (3rd Cir., 1961), the Court of Appeals held, on facts similar to the instant action, that an American citizen domiciled in Mexico does not become, by virtue of such domicile, a citizen of Mexico. The specific question raised here was never considered, but this did not prevent one commentator from noting that the holding in *Pemberton, supra*, has been ". . . to preclude American citizens domiciled abroad from instituting diversity actions in the Federal courts. [And] that under this view aliens have greater rights of access to American Federal courts than United States citizens domiciled abroad." Note, 19 Wash. & Lee, L. R. 78, 79, Spring 1962.

The District Court's reasoning in this case makes state citizenship an absolute for diversity purposes even though it recognizes that "domicile may impress one with the characteristics of a subject of the place of domicile for commercial purposes" (JA 34a). The Court advances the novel theory that national status depends upon what one is doing rather than where one resides or lives, and thus imports into national and international law the unknown entity of "nationality by occupation". From this, only confusion and uncertainty can result.

2. The decision, as the District Court recognized, involves "an important question of federal jurisdiction"

(JA 33a) and it is one which should be, but has not been settled by this Court.[2]

Whether petitioner is, by virtue of her foreign domicile, a "subject" and can properly bring suit in the federal district court under 28 U. S. C. 1332(a)(2), raises a serious question of federal jurisdiction. For the court below, by refusing to regard petitioner as a "subject", has closed the door on what may well be the one tribunal that petitioner could resort to. Having given up her residence in California, she was as to the courts of that state an outsider; remaining an American citizen, the Courts of Mexico would look upon her no differently. Thus, the one tribunal which was open to her in any meaningful sense was the federal court.

3. The decisions of this Court in *The Venus*, 8 Cranch. (12 U. S.) 253 (1814); *Murray v. Schooner "Charming Betsy"*, 2 Cranch. 64; *The Pizzaro*, 2 Wheat. (U. S.) 227; and, *Carlisle v. United States*, 16 Wall. 147, 83 U. S. 147 (1872), recognized that under the law of nations, as well as that of the United States, a person may, by domicile alone, become the "subject" of another nation while still retaining his original citizenship.

The thrust of these decisions is cast aside by the court below in favor of treating the terms "citizen" and "subject" alike even though it appears plain that each word in the statute has a significant and different meaning. See *United States ex rel. D'Esquiva v. Uhl*, 137 F. 2d 303, 305 (2d Cir., 1943).

---

2. In *Wildes v. Barber*, Fed. Cas. No. 17,652 (D. Mass. 1839) Justice Story, sitting as a Circuit Judge, was confronted with a situation nearly similar to the matter sub judice. Without deciding the point he noted (pp. 1225-1226) that it would be ". . . desirable to have the opinion of the supreme court upon the point." The question was certified to this Court for its opinion, but the Court was equally divided in its opinion and the case was thus remanded back to the Circuit Court by Chief Justice Taney.

4. Furthermore, if the court below is correct, and the Federal judicial forum is not available to an American citizen domiciled abroad, then certainly one vital attribute of citizenship has been lost by such citizen and the citizen thereby more closely approximates the status of a stateless person criticized by this Court in *Kennedy v. Mendoza-Martinez*, 372 U. S. 144 (1963).

CONCLUSION.

The question presented by this case is a new question and one of great importance. It involves an important area of federal jurisdiction not heretofore considered by this Court, and, certainly one which vitally affects the large numbers of United States citizens domiciled in foreign countries. Accordingly, this petition for a writ of certiorari should be granted.

Respectfully submitted,

HARRY LORE,
Suite 400, The Wellington,
19th & Walnut Streets,
Philadelphia, Pa. 19103,
Counsel for Petitioner.

PHILIP DORFMAN,
DORFMAN, PECHNER, SACKS & DORFMAN,
Of Counsel

APPENDIX "A".

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 14,394.

EDNA VAN DER SCHELLING,
Appellant,

v.

U. S. NEWS & WORLD REPORT, INC.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Argued November 18, 1963.
Before KALODNER, HASTIE and GANEY, *Circuit Judges*.

Opinion of the Court.

(Filed December 5, 1963).

PER CURIAM.

On review of the record we find no error. The Judgment of the District Court will be affirmed for the reasons so well stated by Judge Joseph S. Lord, III, in his excellent opinion, reported at 213 F. Supp. 756 (E. D. Pa. 1963).

Judgment.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court filed February 4, 1963, in this case be, and the same is hereby affirmed, with costs.

December 5, 1963.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 27 1964
JOHN F. DAVIS, CLERK

No. 876

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

EDNA VAN DER SCHELLING, *Petitioner*,

v.

U.S. NEWS & WORLD REPORT, INC., *Respondent*.

BRIEF OF RESPONDENT U.S NEWS & WORLD REPORT, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JAMES H. McGLOTHLIN
701 Union Trust Building
Washington 5, D. C.
Attorney for Respondent

DAVID B. ISBELL
MICHAEL S. HORNE
COVINGTON & BURLING
701 Union Trust Building
Washington 5, D. C.
Of Counsel

INDEX

	Page
Counterstatement of the Case	1
Reasons for Denying the Writ	3
Conclusion	7

TABLE OF CITATIONS

Cases:

Bishop v. *Averill*, 76 Fed. 386 (C.C. Wash. 1896) 3, 4
Brown v. *Keene*, 33 U.S. (8 Pet.) 112 (1834) 6
Hammerstein v. *Lyne*, 200 Fed. 165 (W.D. Mo. 1912) 3, 6
City of Indianapolis v. *Chase National Bank*, 314 U.S. 63 (1941) 6
McClanahan v. *Calloway*, 127 F. Supp. 929 (N.D. Calif. 1955) 3
Minor v. *Happersett*, 88 U.S. (21 Wall.) 162 (1874) 5
Pemberton v. *Colonna*, 290 F.2d 220 (3d Cir. 1961), *affirming* 189 F. Supp. 430 (E.D. Pa. 1960) 3
The Pizzaro, 15 U.S. (2 Wheat.) 227 (1817) 4
Stein v. *Fleischmann Co.*, 237 Fed. 679 (S.D.N.Y. 1916) 3
Stuart v. *City of Easton*, 156 U.S. 46 (1895) 3
Wildes v. *Parker*, 3 Sumn. 293, 29 Fed. Cas. No. 17,652 (C.C. Mass. 1839) 4
Wittmeyer Trucking Co. v. *Fess Transport Ltd.*, 191 F. Supp. 802 (W.D.N.Y. 1961) 3, 6

Constitution and Statutes:

U.S. Const. art. III, § 2 4
Judicial Code, 28 U.S.C. § 1251(b)(3) 5
Id., § 1332(a) 2, 4
Id., § 1350 5
Id., § 1391 5
Id., § 1442(b) 5
Id., § 2502 ..... 5, 6
Act of September 24, 1789, § 11, 1 Stat. 73, 78 5
Act of March 3, 1875, ch. 137, § 1, 18 Stat. 470 5
Act of June 25, 1948, ch. 85, § 1332, 62 Stat. 869, 930 4

Miscellaneous:

Hart & Wechsler, *The Federal Courts and the Federal System* 898-900 (1953) 6
1 Moore, *Federal Practice* ¶ 0.68[3.-4] (2d ed. 1961) 5
Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 Harv. L. Rev. 49, 77-79, 91 (1923) 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 876

EDNA VAN DER SCHELLING, *Petitioner*,

v.

U.S. NEWS & WORLD REPORT, INC., *Respondent*.

BRIEF OF RESPONDENT U. S. NEWS & WORLD REPORT, INC., IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent U.S. News & World Report, Inc., submits this brief in opposition to the petition for a writ of certiorari herein.

COUNTERSTATEMENT OF THE CASE

Petitioner brought this action in the United States District Court for the Eastern District of Pennsylvania, upon a claim that she was libeled by an article published in respondent's news magazine, *U.S. News & World Report*, which reported and accurately quoted

a speech by a United States Congressman on the floor of the House of Representatives in which the Congressman identified petitioner and others as members of "an American Communist colony in Mexico" (Joint Appendix 10a-11a).[1] The complaint invoked the jurisdiction of the court on the ground of diversity of citizenship (JA 4a), and alleged that petitioner is a "citizen of the United States and a resident of the Republic of Mexico" (JA 4a); respondent is a corporation incorporated in the State of Delaware with its principal place of business in the District of Columbia (JA 14a-15a).

In the course of pretrial discovery it was established that petitioner is a native-born United States citizen (JA 23a-24a) who has been a "permanent and continuous resident" of Mexico since 1950 (JA 22a). Under Mexican law she has the status of "inmigrada," which means a "foreigner who acquires the right of definitive residence in the country," enjoying "the permanent right to live in Mexico" and "the substantial rights of permanent residence and virtual freedom of activity or inactivity" (JA 18a, 19a). In sum, she is a United States citizen domiciled in Mexico.

After petitioner's nationality and domiciliary status were thus established, respondent moved to dismiss the action for want of jurisdiction, upon the ground that petitioner was neither a citizen of any state nor a "foreign . . . citizen or subject" within the meaning of the diversity jurisdiction statute, 28 U.S.C. § 1332(a) (1958). In opposition to the motion, petitioner contended that despite her United States citizenship,

[1] A Joint Appendix (hereinafter cited as "JA") was filed in the court below and petitioner has filed copies of this Joint Appendix with her petition to this Court.

her domicile in Mexico made her a "subject" of Mexico for purposes of the jurisdictional statute. The District Court for the Eastern District of Pennsylvania (Joseph S. Lord, III, J.), after due consideration, granted respondent's motion and dismissed the action (213 F. Supp. 756, JA 31a).

Upon petitioner's appeal, the Court of Appeals for the Third Circuit (Kalodner, Hastie and Ganey, JJ.) affirmed the decision of the District Court per curiam.

REASONS FOR DENYING THE WRIT

The decisions of the two courts below follow a long and unbroken line of decisions holding that United States citizens who are domiciled abroad, like petitioner here, cannot invoke either the diversity or the alienage[2] jurisdiction of the federal courts—and cannot have such jurisdiction invoked against them. *E.g.*, *Pemberton* v. *Colonna*, 290 F.2d 220 (3d Cir. 1961), *affirming* 189 F. Supp. 430 (E.D. Pa. 1960); *Bishop* v. *Averill*, 76 Fed. 386 (C.C. Wash. 1896); *Hammerstein* v. *Lyne*, 200 Fed. 165 (W.D. Mo. 1912); *Stein* v. *Fleischmann Co.*, 237 Fed. 679 (S.D.N.Y. 1916) (L. Hand, J.); *McClanahan* v. *Calloway*, 127 F. Supp. 929 (N.D. Calif. 1955); *Wittmeyer Trucking Co.* v. *Fess Transport Ltd.*, 191 F. Supp. 802 (W.D.N.Y. 1961); *cf.* *Stuart* v. *City of Easton*, 156 U.S. 46 (1895). The only novelty presented by this case is a semantic one: peti-

[2] Prior to the 1948 revision of the Judicial Code, the provision for suits between citizens of different states was commonly called "diversity" jurisdiction, and the provision for suits involving foreign states, citizens or subjects, was called "alienage" jurisdiction. See 1 Moore, *Federal Practice* ¶ 0.60 [3—4] (2d ed. 1961). The 1948 revision brought these two provisions together in a single section under the title "Diversity of Citizenship." Act of June 25, 1948, ch. 85, § 1332, 62 Stat. 869, 930.

tioner has chosen to contend, not that her foreign domiciliary entitles her to sue a "citizen" of a foreign state, as was argued in most prior cases, but that rather her living abroad entitles her to sue as a foreign "subject." So far as the case reports show, this argument was last raised nearly seventy years ago, and then unsuccessfully. *Bishop* v. *Averill, supra*.[3] In this century, the argument either has not been made or else has been thought by the courts to have so little merit as not to deserve mention. Certainly it does not now warrant this Court's time and attention.

The premise of petitioner's argument is that the term "subject" has in some instances been used to refer to residence or domicile. *E.g., The Pizzaro*, 15 U.S. (2 Wheat.) 227, 245-46 (1817). The argument has a simple, fatal fault: "subject" is used in the Judicial Code to convey an entirely different meaning. The phrase "foreign states or citizens or subjects thereof" in 28 U.S.C. § 1332(a)(2), derives directly from the phrase "foreign States, Citizens or Subjects," in Article III, § 2 of the Constitution; and its meaning is, of course, controlled by its constitutional root. The district judge, whose decision the Court of Appeals found so clearly correct as not to require any elaboration, carefully examined the background and history of Article III, § 2, and determined that the word "subject" was there used to designate nationals of monarchies, as distinguished from citizens of republics such as the newly founded United States. (213 F. Supp. at

[3] Only one case has been found in which this argument was thought to have any serious plausibility. *Wildes* v. *Parker*, 3 Sumn. 502, 29 Fed. Cas. No. 17,652 (C.C. Mass. 1839). However, there the point was never decided.

760-61, JA 38a-39a).[4] Since at that time there were far more monarchies in existence than republics, the framers had to use "subject" as well as "citizen" in referring to nationals of foreign states, while the single term "citizen" sufficed to describe nationals of the United States. See *Minor* v. *Happersett*, 88 U.S. (21 Wall.) 162, 166 (1874).

Thus, when the framers wrote "foreign . . . Citizens or Subjects," they meant aliens. Their meaning was illustrated by the first Judiciary Act, in which the word "alien" was used in place of the phrase "Foreign . . . Citizens or Subjects." Act of September 24, 1789, § 11, 1 Stat. 73, 78. See generally Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 Harv. L. Rev. 49, 77-79, 91 (1923).[5] Indeed, the word "alien" still appears in a number of the current provisions of the Judicial Code, and in contexts which indicate that it is synonymous with the phrase "foreign . . . citizens or subjects." 28 U.S.C. §§ 1251(b)(3), 1350, 1391, 1442(b) and 2502. Petitioner's argument asks that she be treated as an alien under § 1332(a), and presumably it would require that she be so treated under these other provisions as well. Among the consequences of such treatment would be that peti-

---

[4] The trial court quite rightly recognized that "subject" has had other meanings in other contexts (213 F. Supp. at 758, JA 33a-34a), but it is simply incorrect to say, as petitioner does, that the court thereby advanced any kind of novel theory of "nationality by occupation." (Petition, p. 6).

[5] When the Judiciary Act was revised in 1875, Congress changed the statute to copy more closely the constitutional language. Act of March 3, 1875, ch. 137, § 4, 18 Stat. 470. There is no evidence that this change in wording was intended to work any substantive change in the pre-1875 law.

tioner's right to sue her own government in the Court of Claims would, under the terms of 28 U.S.C. § 2502, depend upon Mexican law.[6] The absurdity of such results may disclose the real thrust of petitioner's position: what she really seeks is not so much to have United States citizens treated as aliens, as to break down the requirement that a United States citizen must be a citizen of a state—that is, domiciled in a state—in order to sue in diversity. *E.g., Brown* v. *Keene*, 33 U.S. (8 Pet.) 112 (1834). See generally Hart & Wechsler, *The Federal Courts and the Federal System* 898-900 (1953). Thus petitioner hopes to circumvent the decisions of this Court strictly construing diversity jurisdiction, *e.g., City of Indianapolis* v. *Chase National Bank*, 314 U.S. 63, 76-77 (1941), and provide a federal forum for a wider range of non-federal cases.

Petitioner seeks to justify her proposed expansion of federal diversity jurisdiction as a matter of policy by asserting that the present rule is unjust, because it relegates some United States citizens to state courts for non-federal cases. It may be noted that for other United States citizens living abroad, the limitations on diversity jurisdiction appear to have been more often a benefit than a burden. *E.g., Wittmeyer Trucking Co.* v. *Ecss Transport Ltd., supra*; *Hammerstein* v. *Lyne*,

[6] § 2502 reads as follows:

"§ 2502. *Aliens'* privilege to sue.

Citizens or subjects of any foreign government which accords to citizens of the United States the right to prosecute claims against their government in its courts may sue the United States in the Court of Claims if the subject matter of the suit is otherwise within such court's jurisdiction." (Emphasis added.)

supra. The more important answer to petitioner's argument is, however, that diversity jurisdiction was never intended to create a federal forum for every non-federal claim. United States citizens domiciled abroad are but one group among many who may not sue in diversity: most obvious among the other groups are those whose claims are less than $10,000, and those whose suits involve more than two parties as to whom diversity is not complete. Petitioner's policy argument for a federal forum is no more compelling than such persons could make: it is equally devoid of legal substance.

CONCLUSION

The law applied by the courts below is clear and well settled, and requires no further exposition by this Court. It is, moreover, entirely correct, and needs no reconsideration here. The petition for a writ of certiorari should be denied.

Respectfully submitted,

JAMES H. MCGEOTHLIN
701 Union Trust Building
Washington 5, D. C.
Attorney for Respondent

DAVID B. ISBELL
MICHAEL S. HORNE
COVINGTON & BURLING
701 Union Trust Building
Washington 5, D. C.
Of Counsel